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MESSAGE

OF

GOV. HENRY M. RECTOR,

TO

THE GENERAL ASSEMBLY

OF ARKANSAS,

In Extra Session, Nov. 6, 1861.

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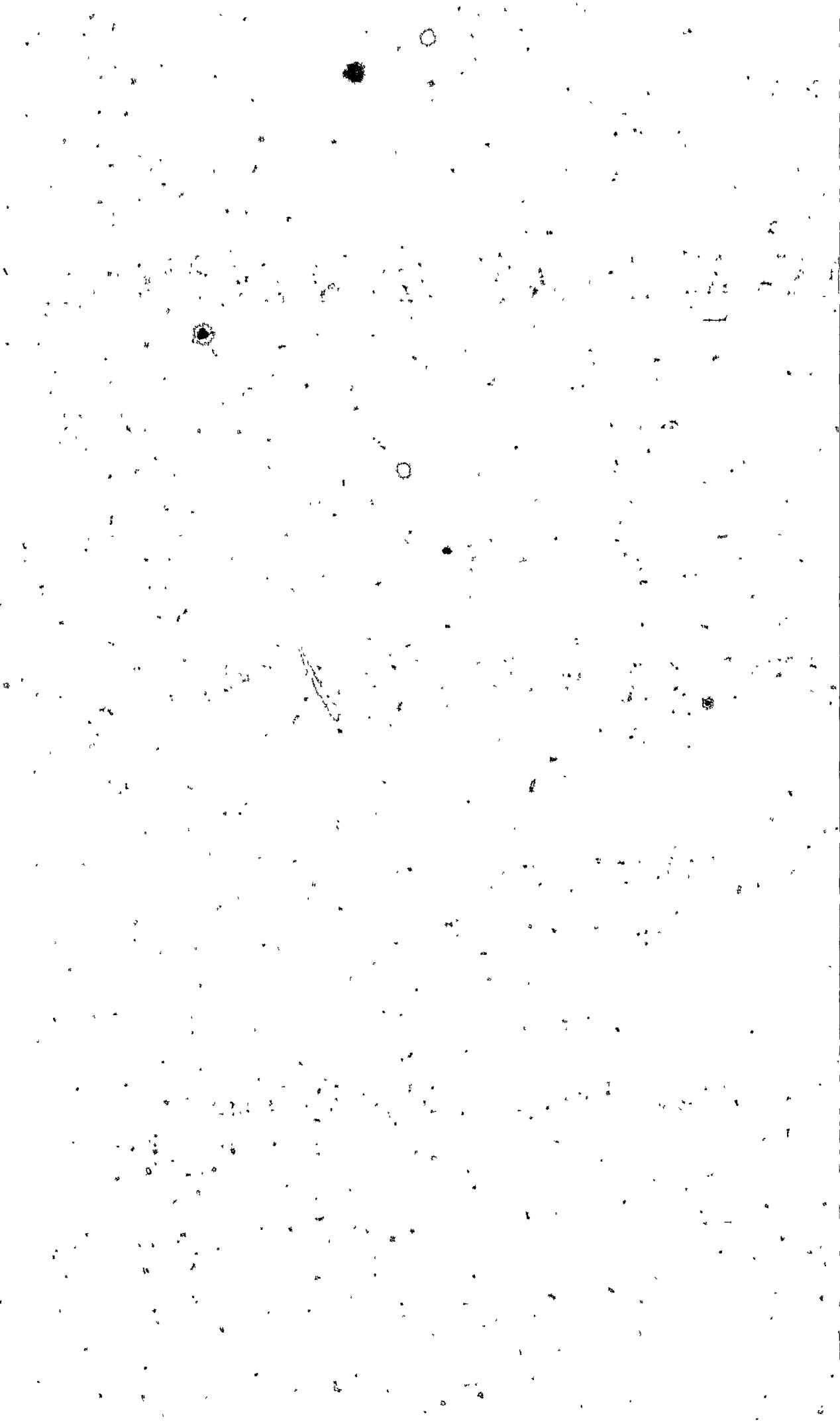


MESSAGE.

Gentlemen of the Senate and
House of Representatives:

By authority of the constitution, and under a profound sense of duty, I have assembled you at the capitol, in session extraordinary.

Since your adjournment, in January last, the most momentous events have transpired in our beloved country. American soil, dedicated by our fathers to the cause of liberty, has, by the hand of a tyrant, been made to drink the blood of its own children. A most sanguinary and relentless war, now culminates, amongst a once happy and united people; its desolating effects wafted upon every breeze, wrings sorrow from every heart—a tear from every eye, which looks and ponders well upon a fallen nation's history.

Arkansas, claiming the right of self-government by the sovereign act of her people in convention, severed her connexion with the old Union, and has taken her stand as one of the Confederate States of America. For this, a relentless war is being waged by a northern despot, claiming the right to *coerce* the people into submission, by *authority* of a republican constitution.

THE WAR,

With us, is a duty, though melancholy indeed—to us, it is the price of life and liberty. Our motto—Liberty or Death—the God of nations has nerved the southern patriot's arm, and flung victory to our banners on every field.

We mourn the loss of many of our fallen brave, but their humble graves, dotting some unfrequented plain,—far from home and kindred,—will tower as monuments of fame, revered, and emblematic of a nation's chivalry.

To our gallant sons and countrymen, who survive the bloody fields of Manassas and Springfield, the country owes its gratitude. The victory at Springfield aroused the drooping spirits of our friends in Missouri, and emboldened them for the brilliant achievement at Lexington.

The tide of war still sets strongly against the vandal forces, and with the aid of providence, we will drive them into the current of the Mississippi, whose turbid waters may serve to hide them from the vengeance of an oppressed and outraged people.

Beside an unbroken series of brilliant achievements, vouch-safed to us in arms—the Giver of all good has blessed the South with abundant harvests—dispelling the vain hope indulged by the North, that we would "be *starved into submission,*" and a surrender of our liberties.

What fatuity! The Confederate States and territories present a country superabundant in all life-sustaining products. The mistake has arisen because agriculture with us heretofore, has been directed to the production of export articles. Those for home consumption will henceforward be substituted for the excess of cotton, thrust upon foreign markets,—the planter realizing as much for a moiety, as he did for the whole of his crop, making clear the articles grown at home for domestic use. A better economy will thus be inaugurated, making articles of prime necessity, as cheap and abundant in New Orleans, as in Cincinnati. More than this, a thousand mines of latent wealth will be tapped by southern energy, that have lain dormant heretofore, from northern competition and rivalry.

Men of small means, as well as capitalists, will be encouraged to work; artisans, mechanics, manufactures—all, will be shut out from Yankee cunning and device, by which the southern people have been driven from the markets. Axe helves and painted buckets may now be made and sold in Arkansas, instead of being brought from Massachusetts.

These desirable results, flowing from a separate nationality, are being induced much sooner by Mr. Lincoln's blockade, than could otherwise have been secured. But so soon as the bitter fruits of experience shall induce them to open the channels of international commerce, a discriminating tariff will turn the bows of their steamers as effectually, as the frowning muzzle of a ten inch columbiad. All in all—our liberties won, the era of 1861, is as much a blessing to the South, as was that of seventy-six to the colonies.

And amongst the states, separating from the old Union, none has greater cause so far for congratulation than Arkansas.

Though for a time the border state, west of the Mississippi, exposed to incursion on three sides, the promptness and valor of her people, has held her soil, up to this moment, sacred, from the polluting tread of Lincoln's soldiery.

A concentration of northern troops at Cairo brought corresponding forces rom Arkansas and Tennessee. No people have evinced higher

patriotism than those of Arkansas. She has an approximate estimate of sixty thousand fighting men. Twenty-one regiments, equal to sixteen thousand eight hundred of these, are now under arms, six thousand in addition, will soon be sent to the field, making the aggregate number as near as can be ascertained, twenty-two thousand four hundred.

The number of fighting men in the eleven Confederate States is estimated at three and a half million; a third of which, being less than the proportion sent by Arkansas, would give one million, one hundred and sixty-six thousand to the confederate army. Still we have the pride, and ability, to furnish twenty thousand more, if necessary.

It is as much the duty of those behind to follow, as it is that those in front should lead.

A sacred obligation rests upon every able bodied man to assist in defending his country, when his services are required. If he believes the cause of the South is an unjust one, he ought to emigrate. If he is too cowardly to take up arms to defend his country, he ought to pray God to kill him.

It is probable that the troops now in the field and those in course of organization from this state, will meet present emergencies, whilst it may be safely calculated that a much larger number will have to go into service before the ensuing spring. In view of which, I beg leave to recommend that a law be passed, authorizing the executive authorities of the state to organize two "class regiments," one of Germans, and their immediate descendants; another of Irish and their descendants, choosing their own officers from among themselves, the two regiments to form a brigade, their general to be appointed by the president.

These people, although brave and patriotic, have been deterred from entering the army, mainly because for them, there was little chance for promotion, and the individual heroism that might be displayed by one or two in a company, establishing no reputation, gratifying to their national pride.

If I should be mistaken, however, in the causes that have deterred them, and it is found to proceed from a lack of inclination, then authority ought to be given to draft a regiment from each class, to be organized as above indicated.

It is not a wise or just government, which in a war like this, taxes native blood and energy alone, leaving the foreign born at home—reaping the fruits of dear bought victories.

The military expenditures of the state amounts, up to this date, to $1,041,603; thirty-seven thousand of which was expended by me in capturing the arsenal at this place, the post at Fort Smith, and United

States stores, taken at Pine Bluff and Napoleon, before the state had seceded from the Union.

The military board has drawn for, and disbursed, since its creation $154,513 81, in specie, and $814,345 00 of war bonds. Aside from this, the people in many counties have contributed largely of their individual means, in equipping and organizing volunteer companies for the war.

The county courts have also appropriated money for the same purpose, which latter amounts, at the close of the war, ought to be collected by a general tax, and returned by the state to the counties advancing the money. Some counties having advanced largely, others, not at all. As to the expense incurred by the state, I am happy to announce, that by an act passed by the Confederate Congress at its late session, the whole amount disbursed for military purposes in the present war, or in view of it, as well before, as since the state seceded, is to be returned by that government, an account of which is now being prepared under the direction of Mr. Miller, (auditor of public accounts,) for presentation, by the secretary of war, to the next Confederate Congress.

The question of taxation is growing to be one of absorbing interest to our people. Beside the authority given the county courts by the state convention, to lay a tax of one per cent. for "home protection," that body, by ordinance approved 28th May, provides that a state tax of one third of one per cent. shall be levied for the year 1862, and that a supplemental tax of one-sixth of one per cent. for the present year shall be collected.

By an act of the Confederate Congress, entitled "an act to authorize the issue of treasury notes, and to provide a war tax for their redemption," approved 19th August, 1861, a tax of one-half of one per cent. is directed to be levied, in each of the Confederate States, exempting estates of less value than five hundred dollars; said tax to be assessed by the 1st day of November, inst., to be paid by 1st May, 1862.

Under these several laws, State and Federal, the amount which the people of Arkansas will be required to pay in taxation, by 1st May next, is estimated at $1,000,000, exclusive of that which may have been levied by the county courts for "home protection," and other county purposes. This, in the present state of things, is simply impracticable. Upon failure to pay, the property may be distrained, exposed to sale, and for the want of bidders, knocked off to the State or Confederate government, as the case may be. This brings no money, but encumbers the government with useless property, inducing premature bankruptcy and decay, state and national.

Is there no relief—no remedy, within the scope of your authority, that will avert such a calamity? I believe there is. In the first place, the ordinance giving authority to the county courts to levy the "home tax," being legislative,—not organic in its nature, may, and in the absence of any necessity, ought to be repealed.

Local defence is worth nothing, when state and national fail. Contemplated insurrection was the consideration moving this ordinance. Apprehensions of this sort, never well founded, no longer exist, in the minds of the people.

Secondly. The war tax levied by the convention, has ceased to be a necessity. Arkansas has no war, nor is likely to have, unless disaster should overtake the Confederate flag.

Her men and means are at the disposal, to be sure, of the Confederate States. But the expense incurred is provided, by taxation, to be paid by that government, finally. I recommend, therefore, that the ordinance levying the supplemental tax, for the present year, and that for the year 1862, be repealed; reinstating the old law upon that subject, from which revenue sufficient will be obtained to defray the expenses of government, and liquidate the interest accruing upon the war bonds now issued, including any that it may be necessary to emit in future.

For I assume, that henceforward the state will incur no expense on account of the existing war. True, disbursements are still being made, in the organization and equipment of troops for Confederate service, but that is covered by the late act of the Confederate Congress.

The above recommendations adopted, the Confederate tax only, remains to be provided for in some mode, other than collecting it directly from the people. Section twenty-four of the act of the Confederate Congress, levying the war tax, provides: "That if any state shall, on "or before the 1st day of April next, pay in the treasury, notes of the "Confederate States, or in specie, the taxes assessed against the citi- "zens of such state, less than ten per centum thereon, it shall be the "duty of the secretary of the treasury to notify the same to the several "tax collectors in such state, and thereupon their authority and duty "under this act shall cease."

This is easily done, by crediting the Confederate government with the amount assessed in Arkansas, less ten per cent., as provided, leaving a balance due us, for moneys expended for military purposes, say $600,000.

I recommend that an act be passed, authorizing the authorities of Arkansas, to pay the Confederate tax in this way; thereby making a

clear gain to the people, of the ten per cent., equal to sixty thousand dollars.

The balance still due from the Confederate government to Arkansas, if received in Confederate bonds, may be retained in the treasury; the interest thereon being at the rate of eight per cent. per annum, would suffice, measureably, to liquidate the interest accruing upon our war bonds, unless unexpected exigences require their disbursement for military or other purposes of the state government.

With this fund on hand, I think there can be no risk in reducing the rate of taxation to one-sixth of one per cent., as fixed by the act of January 10th, 1857. The redemption of the war bonds, would seem, upon first blush, to be desirable, for the reason that the interest paid upon them is a moth upon the treasury.

The scarcity of money among the people, renders it indispensable that some sort of a circulating medium be provided by the state. We are without banks,—ports blockaded—commerce stopped—the precious metals sunk, deep in the vaults of avarice; some sort of paper money must be temporarily supplied, to meet the daily accruing necessities of the people.

The war bonds, to be sure, from motives of speculation, are depreciated now. But it is absolutely impossible, that the most accomplished financiering can keep them below par for any length of time. A million of bonds only, backed by the sovereignty of a state, owning fifteen millions acres public lands,—bearing eight per cent. interest,—payable in coin semi-annually—to be doubted, cried down, speculated upon, by our own people; the honor, lives, and property of whom, are being preserved and protected by their issuance—is as hard to believe, as it is to explain. The land sales, and collection of the revenue, will absorb them in twelve months.

The first of January next will see them at a premium. Capitalists will horde them, and tax payers will compete for the privilege of purchasing.

I suggest, for these reasons, that they be permittted to remain in circulation until absorbed by the payment of public dues, and the purchase of lands.

Without the bonds, but few lands would be entered; with them, the sales will be stimulated, and the revenue largely increased.

The ordinance of the convention, directing the war bonds to be issued, provides that the whole of the two millions shall be issued and sold by the treasurer; and further directs, "As said bonds, hereinbefore pro-"vided for, shall return into the treasury, others due at the same time,

"for the same amounts, and bearing the same interest as those returned, "may be issued in their places, until the expiration of three years from "the passage of this ordinance, after which time they shall be redeemed "at the pleasure of the state, and shall cease to bear interest," etc., etc.

Query! Is it incumbent that the whole amount of two millions shall be issued and sold? I think not, clearly. It may be done if necessary to meet the public wants. In my view, the public service will not require it, and surely it would be bad policy to issue the bonds without a necessity, and sell them in market at a ruinous discount.

Complaints have been rife because the "military board" has drawn for and circulated the bonds at all.

The convention, by ordinance, gave the board the power to draw for specie or bonds. Specie was drawn for as long as there was any; bonds had then to be drawn for, or nothing at all.

It is unaccountable to some, however, that the "military board" could not organize, arm, equip, subsist, clothe, transport and pay twenty regiments of men with one hundred and fifty-four thousand dollars, the amount of coin drawn for up to date.

More treason lurks in Arkansas, under the garb of patriotism, than most men conceive of. Libelous traduction of its authorities, gloatingly sought for, and swallowed by snarling cormorants of newspaper filth, well attest this fact.

No man now, in times as perilous as ever surrounded a people struggling for liberty—who has a heart—whose heart is with his country, will, by unblushing falsehood, and wilful misrepresentation, seek to impair and prostrate the energies of his government, even, for the gratification of slaking an inward thirst for political, or personal vengeance.

"The scaffold and rope," vauntingly threatened our "beloved President" a trice ago, is no less a favorite now with some, but there lacks the power to use them.

The press—the freedom of the press—once the synonym of liberty,—now, the covert and insidious vehicle, for undeveloped treason—the hypocritical defender of public justice—its calling, lowered to the dignity of mercenary avarice—a blessing to the people when guided by enlightened patriotism—a dire curse, when marked by malice and ignorance.

The creation of the "military board," by the convention, I have always, and still regard, as an act of supererogation.

When the acts and views of an executive seem in discord with the settled purposes of the people, a restraining influence, a committee of vigilance, or surveillance over him, would, in some sort, be defensible.

The convention of Arkansas, however, admitted the justice and propriety of each step, taken by her executive, involving trusts, the most delicate and critical in their nature, nevertheless, found it important to put him in strings, for fear too easy a solution might be given of the falsity and folly of those, who still venerated, and clung to the shadows of the old Union.

Contrary to all laws, human and divine, the State of Arkansas presents the anomaly of having one governor, with three heads, two of which must think alike upon any given point, before a step can be taken front or rear. However this may be, the convention, assuming to have authority, decreed that it should be so. And though an unmerited rebuke offered to the executive incumbent,—elected by a majority of the whole people, after an explicit avowal of his views and purposes upon all kindred topics, he has yielded a strict compliance to the requirements of the ordinance, and given hearty co-operation to those who were set over him as his "advisers."

To the gentlemen who have been from time to time constituted members of the "military board," I accord the highest motives of patriotism, coupled with eminent ability. They have, with untiring zeal, labored for the public good, defiant of all censure and persecution. Their record will vindicate and sustain them, as friends of the soldier, their cauntry's cause, of God and humanity.

Assuming control in the most critical period of the state's history, either good fortune, or good counsels, have crowned her efforts, so far, with unrivalled success. Her people have enjoyed every immunity known in time of peace. Internal tranquility, freedom of thought, action and deed, has been maintained, and at less expense than that incurred by other states; she has, in proportion to population, a larger force in the field, than any state in the new government.

TRANSFER OF STATE TROOPS TO CONFEDERATE SERVICE — DISBANDMENT OF PEARCE'S ARMY, AND CAUSES OF DELAY IN PAYING OFF TROOPS.

In consequence of gross misrepresentations made at Richmond, for the accomplishment of political ends, the authorities of the Confederate States labored under the impression that the entire state forces had been transferred to that government by the state convention, and that the military board of Arkansas, the hob-goblin of all the world, in defiance of that authority, were refusing to carry out this supposed mandate. When the truth was, that the convention refused distinctly to make an order of this character. This impression prevailing at Richmond, the

secretary of war esteemed it proper, I presume, that the troops should be tendered by the authorities of Arkansas, and made no request, that the state forces should be turned over to the Confederate government. Neither was there a Confederate general, or a Confederate force sent into, or on the border of Arkansas until some time after things had assumed an alarming aspect in South Missouri, and along our entire northern boundary. Gen. McCulloch, it is true, about the 10th of May, was put in command of the Indian territory, west of the state, and had with him a regiment from Louisiana and one from Arkansas. Before he could be prepared to move from Fort Smith north, however, Lincoln's forces had approached near our northern boundary, with every prospect of making a descent in force upon our people. The military board, under this state of case, thought it a duty to call out and organize troops for defensive purposes. Three regiments were organized in the north-western portion of the state and sent up to the line.

The executive of Missouri had been overwhelmed and asked succor from Arkansas. The black cloud of abolition fanaticism seemed to be rolling southward upon us, presaging consequences the most alarming in their character. South Missouri, even to the very confines of Arkansas, was held and subjugated by Lincoln's armies, still there was no Confederate army to protect us. Self-reliant, and believing, as every body else seems to think, that Arkansas could protect herself, ten additional regiments were called for, seven of which were raised over great opposition from newspapers, politicians, and secret hand bills prepared in Little Rock, though published in Memphis, to disguise their true origin, and the source from whence this manifestation of "southern principles" came.

The military board, for calling these regiments, was denounced, and maligned in the bitterest manner. Motives of the basest character were ascribed, over or under the "privilege of the press," but the people, true to their professions for the South,—true in their allegiance to their own state and its authorities,—rebuked the conspirators, and rallied to the standard of their country.

Being fully sensible of the heavy expense that would be entailed upon the state, by keeping up a large army, and for other manifest reasons, the military board, on the 21st day of June, dispatched to the secretary of war, at Richmond, proposing to transfer the entire state force, with their arms, to the Confederate government, with the understanding that the arms were to be used for the protection of Arkansas. To which the secretary replied, that the men and arms would be received, declining assurances as to their future destination.

Affairs everywhere at that period, were in the most critical condition. To procure arms again, under any circumstances, for state use, was impossible. To disarm our people entirely, leaving them to mere fortuitous circumstances for defense and safety, I regarded as criminal; and that the authorities of Arkansas, consenting to such an arrangement, would be guilty of an unpardonable sin. The guns, in question, be it remembered, were exclusively the property of the state, and retained, doubtless, by the convention for her immediate security—no transfer at that time, from this cause, was made of the troops.

On the 4th day of July, Hon. B. C. Totten, member of the military board, visited Memphis, for the purpose of having an interview with Gen. W. S. Hardee, then recently appointed to the command of the northern border of Arkansas. The object of which was, to effect a transfer of the state troops, upon terms giving security, and protection to our own state. Gen. Hardee visited Little Rock, and being assigned, in command, to the northern border of the state exclusively, an agreement was entered into with him by the board, transferring the entire force, with arms, stores, transportation, and whatsoever else of state property the army had with it—property in the guns retained by the state, or if lost, paid for by the Confederate government. The troops transferred had been enlisted in *state service*, and as matter of justice and good faith to them, it was esteemed, by the military board proper that their consent to the transfer should be obtained; for although *soldiers*, they are freemen, and have rights as well as other people.

The instructions given to the agent sent to complete the transfer by the board were, that a vote should be put to the companies, and if a majority consented to be transferred, those consenting were to be turned over as a company, with the right of recruiting to their requisite number; if, however, a majority declined, the company to be disbanded altogether. This latter was unavoidable, else the captain and three lieutenants remaining, would have still constituted a company organization, without a solitary man in the ranks. One company only, under this test, of the division commanded by Gen. Yell, disbanded. A number from other companies voted out, many re-enlisting—others, say two hundred—from various motives returned home. Receipts were taken for the property, and the agreement thus consummated, as to the eastern division of the army.

The western division, under General Pearce, was included in the contract with Hardee, he having exclusive command in and on the northern border of Arkansas, and he alone being authorized to receive the state

troops. But before an agent on his part could be sent to Pearce's command, the battle of Springfield had been resolved on by Gen. McCulloch, and Hardee advised the military board, that, in view of that fact, he would not receive the troops under General Pearce, until after the battle was fought.

Immediately succeeding that event, the board dispatched Gen. N. B. Burrow, as its agent, with instructions to turn over the troops under General Pearce, to General Hardee, as those under Yell had been transferred. Upon the arrival of Burrow at Springfield, where Pearce's army then was, no agent of General Hardee appearing, Burrow returned to Little Rock and reported, that and other facts connected with his mission; among which are, that he proposed to submit the question to the men preparatory to the transfer, but that General Pearce declined to have it done. Pearce, in a communication addressed to the military board, couched in the most offensive terms, (which communication he, upon application, has had permission to withdraw,) complained bitterly, because the military board had not transferred him with his troops. This was not done because it could not be effected. Yell and Bradley had both been superseded in this way; a thing inevitable, whether desired by the country, the military board, or the generals. It is unprecedented, that state generals command federal troops. No matter how improbable the military board *had made* the distinct proposition, which was as distinctly declined.

After the departure of Gen. Burrow from Springfield, Gen. Pearce, contrary to former instructions, separated his command from McCulloch's, and marched it back over the state line to Osage Mills, where it was informally disbanded, and the men sent home. The return of the army at this juncture was certainly to be regretted; and if induced by the mismanagement of the military board, it unquestionably deserves rebuke. If others, immediately connected with the transaction, are found, upon examination, to be the true authors of the catastrophe, let impartial justice say who they are, irrespective of rank or position. The public ought and have a right to know who, of their public servants, if any, have proven faithless to their trusts.

The disbandment of this force is the prime cause of the threatened invasion of Arkansas by Fremont. For, certainly, if the victory at Springfield had been followed by a forward movement of McCulloch's and Pearce's force, things to-day would have presented a very different aspect.

Without the state troops, McCulloch was left too weak for any thing but passive inaction.

As president of the military board, without explanation, I am responsible to the country for these results; while I am conscious that every thing possible was done by myself, and the board, to retain the troops in service. From unmistakable evidences, it was all the while manifest, that the men under Gen. Pearce were in a disorganized condition; from his past experience, however, it was still hoped, that order and system would eventually be obtained.

Despairing of this finally, and contemplating a transfer of the troops with him to the Confederate government, on the 21st day of June, the military board called Inspector General D. McRae into service, and, by detailed written instructions, directed him to proceed to the head quarters of Gen. Pearce, and inspect, take descriptive lists of, and swear into the service of the state, with the right of transfer to the Confederate States, if necessary, all the men under his command; the board having no returns from Gen. Pearce of this kind, up to that date, nor since. Gen. Pearce was advised of this order, and his co-operation directed. McRae proceeded forthwith to discharge the duty assigned him; but the General in command (Pearce) declined to permit the men to be sworn at all, and said if an attempt was made to administer the oath, he would resist it. The order was not, and could not be executed. McRae went into other service. The fact of Pearce's refusal was not communicated to the board, (although, in justice to Gen. McRae, he states that a report to that effect was prepared, and directed by him to be sent), and the men never were sworn in, during their whole period of service. This fact was ascertained prior to the date of the instructions prepared for Gen. Burrow. Hence it was still necessary that the men should give their consent to the transfer to Confederate service, and Burrow was so instructed.

When McRae first reached the army, with instructions to administer the oath, conditioned for Confederate service, the men were anxious to be put under Confederate generals, and would have consented universally. After the battle of Springfield, when Burrow reached them, a different feeling prevailed to some extent. They had fought a hard battle, and won, by their own redoubtable courage, a glorious victory; and, by a little *encouragement* from commanding officers—*who could not be transferred*—home, friends, relaxation from duty and privation, became, naturally enough, very enticing; and, either by their own votes, or the order of their commander, (it is hard to say which), they did return, and quit the service. If the order sent by McRae had been executed, they would have been transferred without the loss of a man.

vote had been taken by Burrow, before the men turned their faces homeward, few would have declined.

After the return of Gen. Pearce with his army to Osage Mills, the military board, fearing an entire disbandment of the troops, dispatched orders to Gen. Pearce, directing him to suspend all action in reference to the transfer, until he received further directions upon the subject. Hon. B. C. Totten, member of the board, repaired, as hastily as possible, to Pearce's camp. The dispatches, it is said, were received the day following the disbandment. The arrival of Judge Totten served only to stay the waste of public property, scattered in all directions. The army had been turned loose, not discharged, for not a solitary paper of the kind was given, within my knowledge.

Within a short time, I shall ask leave to submit a further report, upon military affairs, from which may be obtained additional information touching the action of the military board, upon this and other subjects.

The delay in paying off the troops has been occasioned by the inability of the treasurer to manufacture the bonds, as rapidly as they were required for use. The authority of the military board was to draw for and pay them out; but it had nothing whatever to do with their sale or preparation.

MILITIA.

The militia of the state is, confessedly, in a disorganized and unsatisfactory condition, which, in the present attitude of things, it is impossible to remedy. A well regulated militia,—the bulwark of free government,—is at all times important, and in time of war, ought to be well disciplined for emergencies. The lack of success, in past efforts, to organize and make it efficient, is attributable to various causes. First, the duty of officers and men is performed without remuneration, unless called into active service, a thing purely accidental, and of rare occurrence. Secondly, the volunteer system cuts off all hope of promotion, and indeed, saps the vitals of the whole thing. Who will undergo the labor and expense of discharging the duties of a militia officer, for the nominal honor of having a title and putting on uniform, significant of anything but active service. Thirdly, another material obstacle presents itself, in the creation and establishment of the "home guard," provided by the convention.

The latter practically supercedes the former. A home guard is to be organized in each township, each man being at liberty to join it who is subject to militia duty. This institution is a sort of conglomerate of military and civil authority, and only suffices to excuse men from mili-

tia and volunteer service. If a Colonel orders his regiment to parade, his men belong to the home guard, which ends the muster.

Again: The organization of the militia, and the preservation of that organization, is a duty involving much labor; so much so, as to render it impossible that the executive can attend to it, unless the proper officers were employed and paid to do the clerical work. To be sure, there is an adjutant general, but the compensation (two hundred and fifty dollars per annum) allowed him, would not furnish the stationery necessary for his office.

To complete and preserve an organization of the militia of this state, would require the constant labor of two men, of competent qualifications, in the adjutant general's office. An army of militia, like any other army, to make it efficient, requires attention, labor and an expenditure of money. The home guard abolished,—a competent salary paid the adjutant general,—with some necessary amendments to the code, the militia force might be organized and relied on for emergencies, otherwise it is, comparatively, valueless as a means of defence.

LANDS GRANTED TO THE CAIRO AND FULTON RAILROAD.

In 1853 Congress granted, conditionally, to the State of Arkansas the lands known under the above designation, to which I respectfully invited your attention, in my message at the last session. The reservation of these lands from sale operates as an incubus upon the country, retarding its settlement, and keeping money from its treasury.

The sections reserved to the United States, by ordinance of the convention, are now in market. Those given to the road, however, are still in reserve, presenting a question of disputed title, between the Cairo and Fulton railroad company, and the state.

In a memorial presented to the convention, signed by the directors of that company, title is assumed to be in said company for the entire grant, and an advertisement in the public prints, reasserts title in it, by proposing to sell lands along the entire route.

The directors say, in their memorial, that "they have undisputed "title to 1,111,343 68.100 acres of land, granted for the purpose of "constructing the road," while it is equally clear, to my mind, that they have no title at all; and that those who may be induced to buy, will spend their money uselessly, against which, it is proper that the state should enter its protest.

The act of Congress, above referred to, granted the lands directly to the State of Arkansas, to be disposed of by the legislature. It is an admitted exposition of that law; that a quantity of land, not exceeding

one hundred and twenty sections, and included within a continuous length of twenty miles of said road, may be sold, whether a lick was struck upon the road or not. The most liberal constructionist, however, never contended, that the entire grant could be disposed of, under such circumstances.

By an act of the legislature, approved 26th November, 1856, such rights as the state had in said lands were granted *conditionally* to the said Cairo and Fulton company, which conditions are, that the charter should be limited in time to five hundred years, and that the said company should, within two years, either grade twenty-five miles, or complete ten miles of said road, with a further stipulation in the act, that it should not be in force until a bond was filed with, and approved by the governor, conditioned for the faithful perforance of all the trusts and requirements imposed by the act.

The constitutional modification of the charter, has not, so far as I have been able to discover, been made. That the road has neither been graded or built, requires no proof to establish, or that a bond was given and approved, I cannot presume, finding no such paper on file in the state department—nor is there a suit pending in the courts, to my knowledge, for the collection of the amount forfeited by non-compliance with the conditions and trusts imposed by the act granting the lands from the state to the company.

If these premises are correct, it follows, that the company has no title. If so, the lands ought to be put in market, by the state, at an early day. The subject merits investigation.

HOT SPRING RESERVATION.

In 1832 congress reserved four sections of land from sale or location, including the Hot Springs, as near the centre thereof as may be. The authorities at Washington subsequently defined the boundaries of the tract, by proper marks upon the township plats.

The quarter section upon which the springs are situate, is claimed by pre-emption, under the acts of 1814 and 1830, respectively—other parties claim title to two hundred arpents of land, embracing the springs, by virtue of a New Madrid certificate, located in 1820. The claimants are contesting their rights in the courts, each one of the three assuming to hold the superior title. No patent was issued by the United States to either claimant. By ordinance of the state convention, approved 11th May last, the public lands which belonged to the government of the "United States" were appropriated and declared to be the property

of the State of Arkansas, "*saving, however, those who may have acquired "any* rights under the laws heretofore existing, *all such rights.*"

Being an interested party, I make no suggestions as to the validity of the state's, nor any body else's title, nor as to the proper mode of testing the right of the state with he several litigants, unless it may be, to make the state a party to the suit now pending, settling the question thus before the Supreme Court of the Confederate Government.

The 46th section of an act of the Confederate Congress, approved March 16th, 1861, provides that "All judgments, orders and decrees, "made by any state court, since the date of secession of such state, "upon any subject or matter, which, before such secession, was within "the jurisdiction of the courts of the United States, shall have the same "force and effect as judgments, orders and decrees of the courts herein "established, with the privilege of either party to appeal or sue out a "writ of error."

The suit between the claimants is pending in the circuit court of Hot Spring county, still undecided; and, under this law can be appealed to the Confederate Court, the state being a party. The property involved is of great value, and a settlement of title, matter of public interest. To the residue of the four sections, the state has undisputed title.

I recommend that an act be passed, authorizing its sale, in lots, blocks and out lots, upon deferred payment, with interest, the purchaser paying for improvements made by settlers; the price fixed by valuation.

NAPOLEON HOSPITAL.

The marine hospital, at Napoleon, by the act of secession, has also fallen into the hands of the state. Some legislative action is necessary, either for its disposition, future management, or keeping, as you may esteem most advisable. But for the unhealthfulness of the locality, it would answer a valuable purpose to the state, as a hospital for the sick and wounded soldiers, many of whom will return from the army in indigent and distressed circumstances.

A hospital ought by all means to be established somewhere in the state for the reception of our returned soldiers. Humanity requires it. No government, in time of war, can be excused for the absence of such an institution. It is neither proper or practicable that the Confederate Government perform this duty for Arkansas. The state has grown rich by the act of secession, and the brave men, who risk everything in her defence, ought to be cared for and alleviated in their sufferings, promptly, and with no parsimonious hand.

There is another subject of kindred character, to which I beg leave to call your attention:

BOUNTY LAND TO SOLDIERS.

Many gallant men in our army have already fallen victims to disease or to battle, whose earnings at home were the chief support of their wives, children, family or friends. Arkansas owns fifteen millions acres of land, acquired by the daring of her brave sons.

With due deference, I recommend that the legal representatives of each deceased soldier, *be* given one hundred and sixty acres of this land, transfers and assignments prior to the date of the patent, and for twelve months after, to be declared by statute, fraudulent and void. There are widows and orphans, now, needing aid and sustenance, whose wants have been brought upon them, by the absence of the lost husband, or father.

A bill of this character, I am persuaded, will need no advocate, save the silent monitor, found in every man's bosom.

PENITENTIARY.

This institution, under its present warden, Mr. A. J. Ward, is paying its own expenses, and has afforded many facilities in equipping the troops. The improvements contemplated by the act of the last session are being erected rapidly, and reported by the inspector to be of good style and material.

The last quarterly reports of the physician, (Dr. John Kirkwood,) and the inspector, (Mr. Thomas C. Peek,) are herewith submitted for your inspection, marked B and C, respectively. To which I beg leave to refer for detailed information, in regard to the penitentiary.

Each of these officers recommend improvements in the sanitary departments. If they can be made at trifling cost, I think it would be well to authorize their construction. The fate of a convict is deplorable at best. All that can, ought to be done by the government to comfort and soothe them in affliction.

SECRETARY OF STATE.

The labor of this officer has been materially increased since the commencement of the war. In reply to a communication addressed to Mr. Stirman, on that subject, he informs me, that since his induction into office, he has issued, and registered, four thousand commissions, civil and military, including patents for school lands, pardons, writs of election, clerk's bonds, etc. For the whole of which, beside other labor of importance, he receives one thousand dollars per annum. The perqui-

sites of the office now are totally insignificant, the conentionv having transferred to the auditor the entire swamp land deed business, from which he originally received a handsome equivalent in the way of fees.

The pay of this officer is insufficient, and bears an unfair proportion to the salaries of other government officials. And, though economy in all the departments is essential at this juncture, I recommend, that the compensation of the secretary be increased, to something like a fair equivalent for his services.

CONFEDERATE SENATORS.

By the permanent constitution of the Confederate States, Arkansas, as other states, is entitled to two Senators in Congress.

The 3d section of the 1st article of said constitution, reads as follows: "The Senate of the Confederate States shall be composed of two sena- "tors from each state, chosen for six years, by the legislature thereof, "*at the regular session next immediately preceding the* commencement of "the term of service," etc.

On the 21st of August last the provisional congress of said States, did enact, "That when in any state of this Confederacy, there shall be "no regular session of the legislature to be held prior to the eighteenth "of February, 1862, it is hereby provided, in obedience to the seventh "article of the permanent constitution, that the election of senators for "the first congress may be made at any special or extra session of the "legislature of such state, prior to the eighteenth of February, eighteen "hundred and sixty-two."

The question arises, can senators, elected at called or extra sessions, under this act, take their seats in the Confederate Senate? Are they constitutionally elected? An authoritative solution of the point involved can be had only, from the Senate itself. "Each house of Congress "being the judge of the qualifications of its own members." In the opinion of the Congress which passed, and the President who approved the law, such an election *is* constitutional, and the senators elect, entitled to their seats. This, though not conclusive, is pretty good authority, and is entitled to great weight, as a precedent, guiding the authorities here.

The seventh article of the Permanent Constitution, "in obedience to which," said act of Congress assumes to have been passed, clause 2d, reads: "When five states shall have ratified this constitution, in the "manner before specified, the Congress, under the Provisional Consti- "tution, shall prescribe the time for holding the election of President "and Vice President, and for the meeting of the electoral college, and

"for counting the votes, and electing the president. *They shall also* "prescribe the time for holding the first election of *members of Con-* "*gress under this constitution*, and the time for assembling the same."

The term "members of Congress," is used ordinarily in contra-distinction to that of "senators," and applies, in common parlance, to "members" of the lower house.

The provisional Congress did, on the 21st day of May, 1861, pass an act requiring "members of Congress" to be elected on the 6th November, but said nothing about the election of senators.

The seventh article, for these reasons, in my opinion, was not designed to authorize the provisional Congress to prescribe the time or manner of electing Confederate senators. The sixth article, however, of that instrument, I think, does validate, and make good, the act authorizing the election of senators, at irregular sessions. It declares that "the "government, established by this constitution, is the successor of the "provisional government of the Confederate States of America." "And *all the laws passed by the latter shall continue in force until the* "*same shall be repealed or modified*, and all officers appointed by the "same shall remain in office until their successors are appointed and "qualified."

The act, therefore, of 21st July, directing the election of senators *is* "*in force*," and will continue, until "repealed," modified or rendered obsolete. Anything in the permanent constitution to the contrary notwithstanding.

The seventh article imposes a restraint upon the remainder of the whole instrument. Acts passed by the provisional Congress, whether squaring with the permanent constitution or not, are held valid and binding, on the permanent government; otherwise, the two systems could not be assimilated, and harmonized with each other.

The "successor" takes the "original" just as it finds it; holding its acts good. The new government springs into existence, with such qualifications, as may have been imposed by the old one. Your right to choose senators, I hold, therefore, to be clear; unless "the convention," a body which you created, has uncreated you.

The "military necessities" of the times are very great, to be sure, but will hardly justify such an anomaly as this.

The convention assembled for the purpose of improving and remodeling a government; certainly not to abolish, and destroy all government, and leave the people none at all. The legislature abolished, the whole fabric totters to the ground. The continued and perpetual existence of

each branch—legislative, executive and judicial—is indispensable to the other. No interregnum of the legislature exists in contemplation of law; and, whether in session or not, its powers, its being, is co-existent with other departments of state, for, and during the two years, for which, by the constitution, it is elected.

As to the power of the convention to abolish it, I need express no opinion; it being necessary only to determine, whether it has done it, or intended to do it.

I not only find nothing in its proceedings of an express character, manifesting such an intent, but nothing which by implication tends to such a conclusion. The journals and ordinances of that body, on the contrary, are full of testimony recognizing the existence of the present legislature.

In the first place, no proposition was ever submitted in the convention for the abolishment of the legislature. That question, from the journals, does not appear to have been mooted.

The second section of the ordinance "prescribing an oath to be taken "by all military and civil officers in the service of the state," reads as follows:

"*Be it further ordained*, That the members of the General Assembly "of this state shall take the above oath, or affirmation, before they "shall proceed to exercise the functions of legislation, to be admini-"stered to them in the manner now prescribed by law."

On page 298, "Journals of the Convention," may be found the following resolution:

"WHEREAS, This convention has been informed that his excellency, "H. M. Rector, has placed in the hands of the state printer of this "state, his proclamation, whereby the General Assembly of this state "is invoked to meet at the city of Little Rock, on or before the first of "June; *and whereas*, said proclamation, if made, is in direct antago-"nism to the will of this convention, as well as disastrous to the inte-"rests of the people of this state:

"*Resolved*, That his excellency be, and is hereby respectfully requested "to suppress the publication of said proclamation indefinitely, that con-"fusion and injury to the public interest may be avoided, and that a "copy of the resolution be transmitted," etc.

In reply to which *modest* suggestion, May 22d, I advised the convention that my proclamation, convening the General Assembly, would be withheld for the *present*.

That the convention, up to this date, did not conceive that the legisature had been abolished, is clear. For, if so, it was perfectly immate-

rial whether the individuals originally constituting it, assembled at the capitol, or not. Again, recognition of an existing legislature, and a contemplated convocation of that body, may be found in almost every ordinance passed by the convention—some ordinances, by express terms, are made repealable by the legislature at any time; others *only* at regular sessions; others still, to continue to the end of the war; and still others, to run co-extensive with time.

But, the constitution of the state, the closing work of the session, whereby the organic structure of the government was finally fixed, repealing all else done by the convention antagonistic thereto, recognizes, and provides for a legislature, concurrent and cotemporary with other departments of government. The only change made in reference thereto, is, that the members thereof, shall be elected hereafter on the 1st Monday in October, instead of in August, as provided before.

The 3d section of the 5th article of the present constitution, provides "that the House of Representatives shall consist of members to be "chosen every two years by the qualified electors of the several counties, "at such times as the General Assembly *has prescribed*, or may hereafter "prescribe." The legislature *has* prescribed that you, gentlemen, should be elected on the first Monday in August 1860, which election is emphatically recognized, by the convention in framing *this clause* of the constitution.

But aside from all else, if the convention had abolished the old legislature, would it not have provided for a new one, earlier than October, 1862? Would it have left the people, in times so critical, without representation in their government? The question seems too clear to need argument; and my apology for presenting it is, that the "press" have enlightened the public mind, into some confusion, upon the subject, tending to disloyalty, a general demoralization of the government, and disrespect and contempt for its legally constituted authorities.

The idea that the convention can assume to itself general powers of legislation; swallowing up every other department of state; suspending the sovereignty of the people indefinitely in its hands; with the power, as claimed for it, "to do any thing it wanted;" has admonished the said people never to call another, as long as the world lasts, if it can possibly be avoided.

The powers delegated to that body was, to take the State out of the Union—annex it to the Confederate States—leaving the state government intact. All else was usurpation. Any legislation, consequent upon

the change of government, belonged to the two houses of the General Assembly and the executive.

As an accompanying document, I beg leave to present herewith, a summary statement marked A, prepared by Mr. William R. Miller, auditor of public accounts; showing the receipts and disbursements made through the treasury, in specie, from 1st October, 1860, to Oct. 1861, inclusive. Which embraces $10,000, paid by order of the convention to Col. Jas. F. Fagan, and 10,000 each advanced Gen's. Bradley and Pearce, for military purposes.

HENRY M. RECTOR.

"A."

AUDITOR'S OFFICE,
Little Rock, *November* 1*st*., 1861.

His Excellency,
HENRY M. RECTOR,
Governor of the State of Arkansas:

SIR—In reply to your enquiries of the 31st ult., I herewith submit a statement showing the amount of the receipts and expenditures through the state treasury, from 1st October, 1860, to 31st October, 1861.

In further answer to your enquiries, I would say, that the amount paid the Little Rock and Fort Smith Branch of the Cairo and Fulton Railroad, out of the swamp land fund of the Clarksville district, is $38,000, and the amount paid to levee contractors from 1st Oct. 1861, in specie, is $71,334 85.

Very respectfully,
Your obedient servant,
W. R. MILLER, *Auditor*.

STATEMENT *Showing the balance of specie in the State Treasury on the 1st October*, 1860, *applicable to state expenditures, the amount received since up to the* 31st *October*, 1861, *and the amount expended during that time.*

RECEIPTS.

Amount of specie in the state treasury 1st October, 1861,	$304,106 98
Amount received from all sources from 1st October, 1860, to 31st October, 1861	324,626 20
Total	$628,733 18

EXPENDITURES.

By amount paid for purchase of arms	$ 39,910 37	
By amount of expenses of legislature	39,273 43	
By amount of expenses of state convention,	26,558 52	
By amount of expenses of M. and L. R. railroad company	100,000 00	
By amount expended for military purposes,	227,258 01	
By amount set aside to pay interest on war bonds	60,000 00	
By amount expended to pay special appropriations made by the legislature and state convention, and to pay the ordinary expenses of the state government	135,732 85	
		$628,733 18

W. R. MILLER, *Auditor.*

AUDITOR'S OFFICE,
Little Rock, Nov. 1st, 1861.

"B."

REPORT

OF

INSPECTOR OF THE

ARKANSAS STATE PENITENTIARY,

For Quarter ending 30th Sept., 1861.

ARKANSAS STATE PENITENTIARY,
Little Rock, *October* 15*th*, 1861.

To his Excellency,

HENRY M. RECTOR,

Governor of Arkansas:

SIR—The provisions of the act of 18th January, A. D. 1861, by authority of which your excellency appointed me Inspector of the State Penitentiary, required me to make quarterly reports to the governor, as to the progress of the work and the quality of the materials used in the construction of certain buildings, authorized by the first section of said act to be built; and, also, to supervise and make quarterly reports to the governor, of the health, treatment and conduct of the convicts.

The law authorizing these buildings to be erected, also required the auditor of public accounts, treasurer and secretary of state to contract with Mr. A. J. Ward, for their construction—that is to say, of "an additional workshop, a warden's or keeper's house, additional cells and apartments for female convicts; to be of the following dimensions and material, to-wit: First, an extension of the smith shop seventy-five feet, raising the whole building to two stories high, covered with slate; material and finish as the work shop within said penitentiary wall. Secondly, an addition of sixty-four new cells to the dormitory or main building, the opening in wall, grates, the locks and cells corresponding with those now erected, raising the main building three or four feet higher, affording proper light and ventillation to the cells. Thirdly, a warden or

keeper's house, to be built over the gate adjoining the wall, of the dimensions, and upon the plan as represented by the draft of said A. J. Ward, submitted to the committee on the penitentiary, etc., to be built of brick, with a slate roof, and finished in a workmanlike manner, and of as good material as the workshop now in said yard."

The contract was duly made in accordance with the provisions of this law; and, to the extent which the buildings have been completed, the work has been done, and materials used, according to the terms of the contract. Mr. Ward was allowed two years in which to complete said buildings, and to be allowed therefor the sum of twenty-three thousand dollars, to be paid in such sums and at such times as might be necessary to aid him in prosecuting and completing the work.

The additional work shop provided for, has been completed; the old smith shop extended seventy-five feet, and the whole building raised to two stories high—the roof covered with slate, and otherwise well and substantially built.

The warden's house—all except the plastering, has been completed. It is a neat and substantial edifice, built of brick, with a slate roof, and constructed in accordance with the terms and stipulations of the contract as based upon the plan agreed upon by the penitentiary committee.

The additional sixty-four cells provided for, are in course of construction. Preparatory thereto, the walls of the main building have been raised to the required height, and about one half of the roof put on. The materials for completing all the work are on the premises, and the work is rapidly progressing. At present rate of progress the cells and all the other buildings will be completed by the first of next March. To aid Mr. Ward in constructing and completing this work, I have certified to him at various times and in various amounts, the aggregate sum of fifteen thousand, and one hundred dollars—leaving a balance due when the work is completed of seven thousand and nine hundred dollars—a sum amply sufficient to guarantee its completion.

In regard to the "health, treatment and conduct of the convicts," I have to report that their health, generally, seems to be about as good as the badly planned construction and sanitary arrangements of the prison will admit of. In this connection, I would beg leave to suggest to your excellency some improvements which I think would add much to the health, to say nothing of the comfort and convenience of the prisoners. The cells are very imperfectly ventilated—so much so as in my judgment, to render their habitation utterly incompatible with sound health. Besides this, they are very damp—especially the lower tier of cells. This is occasioned, in a great measure, by there being no pavement or covering of any kind upon the ground floor of the building, which, in its present condition, absorbs much of the water used in washing, and wasted by the convicts in their daily ablutions. These very palpable defects, which are owing to no fault or negligence on the part of the warden, might be easily remedied by a very simple improvement in the ventillating arrangements of the cells, by covering the ground floor of the corridors and lower tier of cells with a layer of hydraulic cement, and by providing a wash room for the convicts outside the walls of the prison building.

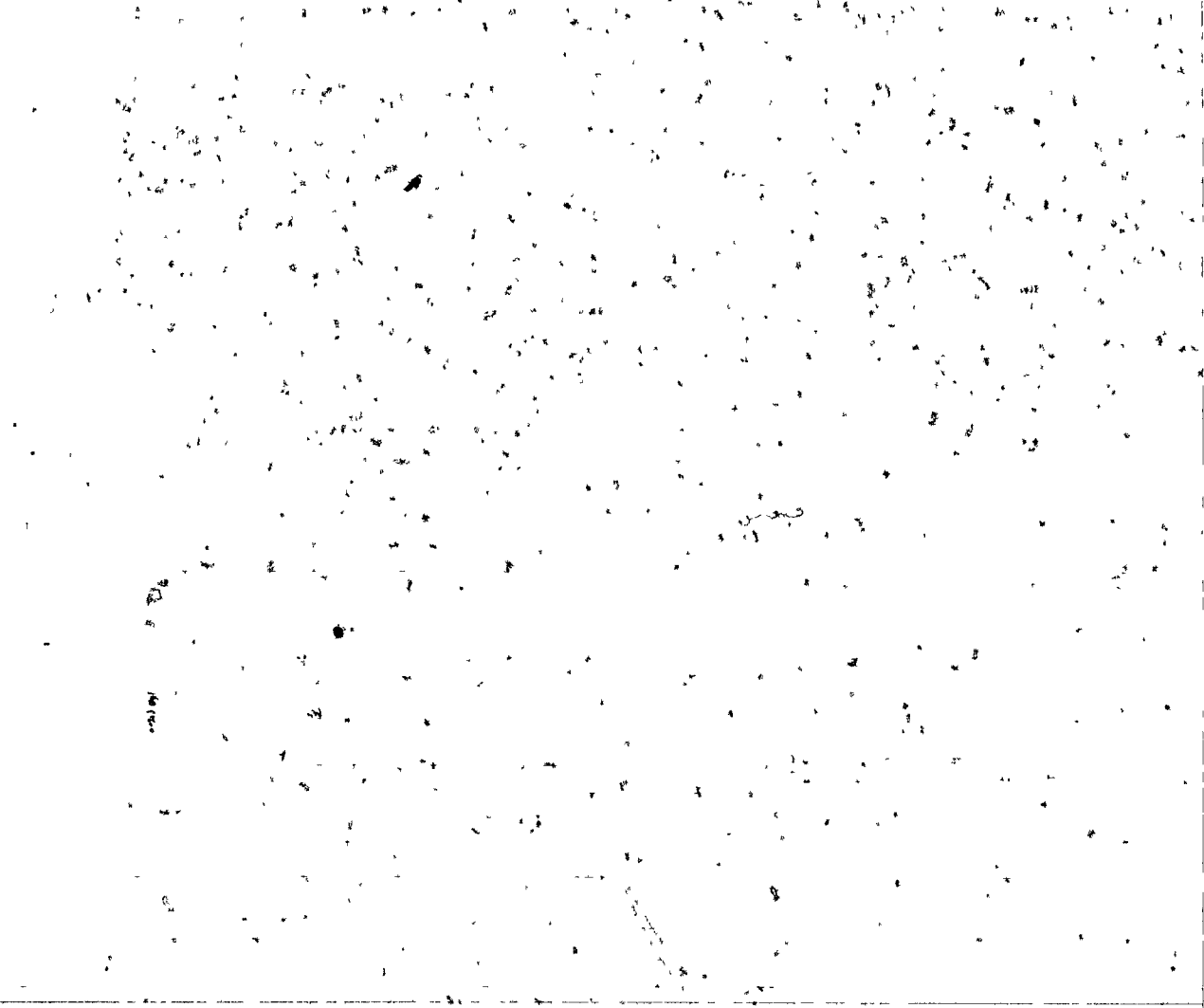
Another very great defect in the sanitary arrangements of the prison might be remedied by contriving some plan for carrying off the continual accumulations of filth. This could be done by means of a sewer

and conduit, washed by a constant stream of water which could be easily obtained by a very small addition to facilities already existing on the premises.

As to the treatment of the prisoners, I have to report that it is as kind and humane as a due regard for proper discipline and subordination will allow. They are well clad and well fed, and but for the wretched condition of their cells would be as well provided for as could be desired. Their conduct is uniformly good; and this, I take pleasure in saying, is to be attributed entirely to the admirable system of discipline and police which Mr. Ward has adopted for their management and control.

Respectfully,

THOS. C. PEEK,
Inspector State Prison.



"C."

REPORT

OF THE

ATTENDING PHYSICIAN.

To his excellency HENRY M. RECTOR,
Governor of Arkansas:

SIR—Since my appointment, June 8th, 1861, physician to the penitentiary of the State of Arkansas, I have endeavored, by regular visits, to discharge the obligations which humanity and the official requirements of the position impose. I owe the further duty of reporting quarterly to your excellency the sanitory condition of the prison, and have the honor to offer the following report for the quarter ending Oct. 1st, A. D. 1861:

Total number of patients reported for treatment	70
Discharged as convalescent	60
Dead	5
Still under treatment	5

In reference to this statement, I beg leave to remark, that dysentary, intermittent and remittent fevers, of a malignant type, have prevailed during the season throughout the community, and extending to the prison, having there been aggravated by the unwholesome exhalations arising from excavations of damp earth and slate rock, which were necessarily made in constructing certain improvements to the prison building required to be erected during the quarter.

In two of the cases reported, death resulted so speedily that the patients died in their cells almost unknown to the keepers. For want of the office and attention of a "hospital steward," never provided, the sick have suffered for want of necessary attention. A supply of suitable food for proper aliment, during sickness, for which no appropriation has been made, and suitable bedding has been sadly wanting. The addition of a small library, for Sunday reading, indirectly by administering to

the privations of prison life, would aid no little, in my opinion, in contributing to the bodily health of the inmates.

The treatment of the prisoners enjoying good health, and the discipline adopted, is such as to reflect credit upon the keeper.

But I cannot conclude these remarks without observing that an improved ventilation of the cells is an absolute necessity, if the temporary imprisonment is not contemplated to result in the absolute execution of the criminals consigned to the atmosphere of their now noxious walls.

All of which is respectfully submitted.

JOHN KIRKWOOD, *Physician to Penitentiary of Arkansas.*

LITTLE ROCK, October 1st, 1861.